Supreme Court, U.S.
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NO: 95-948

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1995

TERM AUTO SALES INC., EKP INC., BROOKLYN SALAGE, ERNEST BOZIKIS, KERIAKOS BOZIKIS,

Petitioners

vs.

THE CITY OF CLEVELAND, HOWARD RUDOLPH CHIEF OF POLICE

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

BRIAN D. DUNBAR
1030 Euclid Avenue
Cleveland, Ohio 44115
(216) 621-0880
Attorney for the Petitioners

35 pp

QUESTION PRESENTED

I. WHETHER THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT CORRECTLY APPLIED ALL OF THE STANDARDS SET FORTH IN NEW YORK V. BURGER TO DETERMINE THAT CODIFIED ORDINANCE OF THE CITY OF CLEVELAND §601.15 IS CONSTITUTIONAL.

RULE 14.1(b) LIST OF PARTIES

Petitioners:

Term Auto Sales, Incorporated
(no parent or subsidiaries)

E.K.P., Incorporated, dba Brooklyn Salvage
(no parent or subsidiaries)

Ernest Bozikis

Keriakos Bozikis

Respondents:

The City of Cleveland

Howard Rudolph, Chief of Police, Cleveland, Ohio

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STATEMENT OF JURISDICTION

The United States Court of Appeals for the Sixth Circuit entered its Order in this case on May 18, 1995. On June 1, 1995, the Petitioners herein filed their Petition for Rehearing. On July 12, 1995, the Petition for Rehearing was denied by the Court of Appeals.

The jurisdiction of this Honorable Court is being invoked pursuant to Title 28 of the United States Code §1254(1) that provides for review by Writ of Certiorari of all cases decided by the United States Courts of Appeals. This Court has jurisdiction to hear this case pursuant to 28 U.S.C. §1343(3) which grants jurisdiction for suits redressing violations of the federal laws that provide for the equal rights of citizens.

CONSTITUTIONAL PROVISIONS, STATUTES, TREATIES, ORDINANCES, AND REGULATIONS INVOLVED

UNITED STATES CONSTITUTION

Amendments IV, XIV ..... App. C.

UNITED STATES CODE

28 U.S.C. §1254(1) ..... App. C.

42 U.S.C. §1983 ..... App. C.

LOCAL ORDINANCES

Codified Ordinances of
the City of Cleveland §601.15 ..... App. C.

I. STATEMENT OF THE CASE

This case was brought pursuant to 42 U.S.C. §1983, 28 U.S.C. §1331 and 28 U.S.C. §1343(3) alleging, inter alia, that the Respondents violated the Petitioners' right to be free from unreasonable searches pursuant to the Fourth Amendment to the United States Constitution, as well as pursuant to the general federal question jurisdiction statute.

On July 17, 1987, the Petitioners filed their Complaint in this case in which they alleged that their civil rights were violated by the Respondents when the Respondents conducted a warrantless raid of the Petitioners business premises, seizing items that lacked certain federal certification labels or vehicle identification numbers. On May 4, 1988, The City of Cleveland and Howard Rudolph, Chief of Police filed a Motion for Summary Judgment on behalf of ten police officer Defendants. This Motion was denied by the District Court without written opinion on April 8, 1991.

An interlocutory appeal followed in which the United States Court of Appeals for the Sixth Circuit vacated the District

Court's order and remanded the case for further consideration and the issuance of an opinion. On July 28, 1992, the District Court issued a memorandum of opinion and order denying the Defendant Police Officer's Motion for Summary Judgment based on the defense of qualified immunity. The Defendant Police Officers again filed an interlocutory appeal of the District Court's order.

In a Per Curiam decision rendered on June 28, 1993, the Sixth Circuit reversed the District Court's denial of the Defendant Police Officers Motion for Summary Judgment and found that the Defendant Police Officers were entitled to assert a defense of qualified immunity.

On August 10, 1993, the District Court granted judgment in favor of all Defendants on the basis of qualified immunity.

Petitioners filed a Motion for Relief from Judgment pursuant to Fed.R.Civ.P. 60(B) in the District Court on October 12, 1993. This motion was denied on December 14, 1993. On December 20, 1993, the Petitioners filed a Motion for Reconsideration of the denial of their Motion for Relief from

Judgment. This Motion was denied by the District Court on January 18, 1993.

The Petitioners filed their Notice of Appeal on January 13, 1994. This appeal was stayed due to the Petitioners' pending Motion for Reconsideration. Following the denial by the District Court of the Motion for Reconsideration, the Appellants filed their Amended Notice of Appeal on February 16, 1994.

On May 18, 1995, the Court of Appeals ruled in favor of the Respondents. The Petitioners then filed a Request for Rehearing on June 1, 1995 that was denied on July 12, 1995.

II. ARGUMENT

I. THE COURT OF APPEALS INCORRECTLY APPLIED THE STANDARDS SET FORTH IN NEW YORK V. BURGER TO DETERMINE THAT CODIFIED ORDINANCE OF THE CITY OF CLEVELAND §601.15 IS CONSTITUTIONAL.

In it's Opinion of May 18, 1995, the United States Court of Appeals for the Sixth Circuit applied the standards set forth in New York v. Burger, 482 U.S. 689 (1987) to determine that Codified Ordinance, City of Cleveland §601.15 is constitutional.

In doing so, the Court, citing to Burger noted that there is a substantial governmental interest in regulating the vehicle dismantling industry because automobile junkyards and vehicle dismantlers provide the major market for stolen vehicles and vehicle parts. It then noted that authorization of warrantless searches is necessary to further the regulatory scheme in question. The Burger statute was then applied to the Cleveland Ordinance in order to reach a finding of constitutionality.

The Court erred in so doing, however, because it only addressed the time prong of the Burger test. In order to provide the constitutionally adequate substitute for a warrant required for warrantless searches of closely regulated industries, three

requirements must be met. First, there must be a substantial government interest in regulating the industry in question. Second, the warrantless inspections must be necessary to further the regulatory scheme. Burger, 480 U.S. at 702; Donovan v. Dewey, 452 U.S. 594 (1981). Finally, the statute's inspection program, in terms of the certainty and regularity of its application must provide a constitutionally adequate substitute for a warrant. Burger, 480 U.S. at 703; Donovan, 452 U.S. at 600.

In order to meet this final test, the statute must contain limitations on the time, place, and scope of the warrantless searches.

> "[T]he regulatory statute must perform the two basic functions of a warrant; it must advise the owner of the commercial premises that the search is being made pursuant to th law and has a properly defined scope, and it must limit the discretion of the inspecting officers." Burger, 480 U.S. at 703.

> "To perform this first function, the statute must be sufficiently comprehensive and defined that the owner of the commercial property cannot help but be aware that his property will be subject to periodic inspections for specific purposes." Id; Donovan, 452 U.S. at 600; Marshall v. Barlow's, Inc., 436 U.S. 307 (1978).

Finally, the statute must carefully limit the time, place, and scope of the warrantless searches. Burger, 482 U.S. at 703; United States v. Biswell, 406 U.S. 311 (1972).

To satisfy the certainty and regularity requirement, the inspection program must define clearly what is to be searched, who can be searched, and the frequency of such searches. Bionic Auto Parts & Sales v. Fahner, 721 F.2d 1072 (7th Cir. 1983).

Even in the context of a pervasively regulated industry, the provisions allowing warrantless searches must be tailored to the states's proper objectives and must minimize the dangers inherent in the unbridled exercise of administrative discretion.

In Burger, the Court found that the automobile scrap industry is a pervasively regulated industry that is subject to warrantless administrative searches, and that such searches are necessary to further the regulatory scheme. It then upheld the New York statute that allowed warrantless searches of the automobile scrap industry. In upholding the statute, it noted that the statute in question was sufficiently narrow to provide a constitutionally adequate substitute for a warrant. The owner of

a vehicle dismantling business was informed that inspections of all such industries would be made on a regular basis; the searching official was allowed no discretion in deciding who to search. Additionally, the statute set forth who was authorized to conduct the inspection, the scope of the inspection, placed the operator of the salvage yard on notice as to how to comply with the statute and specifically delineated who was authorized to conduct an inspection under the statute. Finally, the New York statute placed careful time, place, and scope limitations on the inspections. The searches were allowed to be carried out only during regular and usual business hours, could only be made of vehicle-dismantling and related industries, and only records, vehicles, or parts of vehicles subject to certain record keeping requirements, located on the premises, were subject to warrantless searches.

Thus, in the present case, although finding that there is a substantial governmental interest in regulating the vehicle dismantling industry, and that the authorization of warrantless searches is necessary to further that regulatory scheme, the Court

of Appeals failed to properly apply the constitutional standards required of warrantless inspection schemes prior to finding the Cleveland Ordinance constitutional.

Rather than apply all of the standards set forth in Burger, the Court of Appeals looked only to the time prong of the Burger test. The Court of Appeals overlooked the fact that the Cleveland Ordinance contains no limits on the time or place of the warrantless searches, and is so broad in scope that even individuals who are not involved in the vehicle dismantling industry, including Petitioner Term Auto Sales, a car dealer, are subject to a warrantless search at the whim of the Cleveland Police. The Court of Appeals similarly failed to address that fact that the Cleveland Ordinance contains no delineation of what may be searched, who may be searched, who may search, when warrantless searches may take place, or how often warrantless searches of a particular business may be performed.

Unlike the Burger statute, the owner of a vehicle dismantling business in Cleveland, Ohio is not informed that inspections of all such industries would be made on a regular

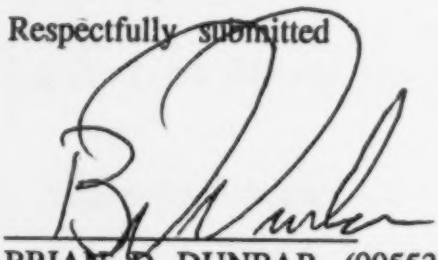
basis; the searching official was allowed broad discretion in deciding who to search; the Ordinance fails to set forth who is authorized to conduct the inspection, what the scope of the inspection may be, does not place the operator of the salvage yard on notice as to how to comply with the statute and does not specifically delineate who is authorized to conduct the inspections. Finally, the Cleveland Ordinance does not place careful time, place, and scope limitations on the inspections. The Ordinance does not require the searches to be carried out at only specific times, does not limit the searches to the vehicle-dismantling and related industries, and does not limit the searches to records, vehicles, or parts thereof.

Clearly, the United States Court of Appeals for the Sixth Circuit has decided this important federal question in a way that conflicts with prior relevant decisions of this Court. Thus, it is paramount that this Honorable Court grant this Petition for a Writ of Certiorari.

III. CONCLUSION

For all of the foregoing reasons, the Petitioners respectfully request that this Honorable Court grant the Writ of Certiorari and accept this case for review.

Respectfully submitted



BRIAN D. DUNBAR (0055352)
The Truman Building, Suite 410
1030 Euclid Avenue
Cleveland, Ohio 44115
(216) 621-0880

Attorney for the Petitioners

INDEX TO APPENDICES

APPENDIX A: Opinions, orders, findings of fact, and conclusions of law, whether written or orally given and transcribed, entered in conjunction with the judgment sought to be reviewed.

May 18, 1995 Order of 6th Circuit Court of Appeals.

APPENDIX B: Any order on rehearing, including the caption showing the name of the issuing court, the title and number of the case, and the date of entry.

July 12, 1995 Denial of Petition for Rehearing.

APPENDIX C: Constitutional provisions, treaties, statutes, ordinances and regulations involved in the case, set out verbatim with appropriate citation.

U.S. Constitution, Amendment IV.
U.S. Constitution, Amendment XIV, Section I.
28 U.S.C. §1254(1).
42 U.S.C. §1983.
Codified Ordinance of the City of Cleveland, §601.15.

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Term Auto Sales, Inc., et al.

Plaintiffs-Appellants

v.

The City of Cleveland, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Ohio, Eastern Division
Case No: C87-1825

(Hon. John M. Manos, Trial Judge)

Before: Keith, Martin, and Guy, Circuit Judges

(Argued April 3, 1995 Decided May 18, 1995)

PER CURIAM, Section 601.15 of the codified ordinances of the City of Cleveland provides for the inspection of vehicles and vehicle parts at certain enumerated location for the purpose of locating stolen motor vehicles or stolen vehicle parts. On July 21, 1986 members of the Cleveland Police Department's auto theft unit, acting pursuant to the

aforementioned ordinance, conducted a warrantless search of the premises of Term Auto Sales and Brooklyn Salvage. Both vehicles and parts suspected of being stolen were seized. Term Auto and Brooklyn Salvage were ultimately prosecuted but at the request of the county prosecutor the indictment was dismissed.

Subsequent to the dismissal of the indictment, plaintiffs instituted this action pursuant to 42 U.S.C. §1983, naming the City of Cleveland and a number of police officers as defendants. The individual defendants sought summary judgment, relying upon the defense of qualified immunity, but their motion for summary judgment was denied. In an earlier appeal to this court we ordered the case dismissed as to the defendants sued in their individual capacities based upon the doctrine of qualified immunity. Term Auto Sales, Inc. v. City of Cleveland, No. 92-3909, slip op. (6th Cir. June 28, 1993).

The case was then remanded to the district court for further proceedings. At this time the only claims left in the case were the claims against the City of Cleveland and the official capacity claim against the chief of police. Since the official

capacity claim against the chief of police is essentially a claim against the City, for all practical purposes the City of Cleveland was the only defendant on remand. Kentucky v. Graham, 473 U.S. 159 (1985); Leach v. Shelby County Sheriff, 891 F.2d 1241 (6th Cir. 1989), cert. denied, 495 U.S. 932 (1990).

The only claim involving the City of Cleveland was a facial attack on the constitutionality of Section 601.15. On remand the district judge once again granted summary judgment, holding that the City of Cleveland also benefitted from our qualified immunity decision, and, further, that the ordinance under attack was not facially unconstitutional. This timely appeal followed.

After reviewing the proceedings that occurred in the district court following remand, we conclude that the district court erroneously applied the doctrine of qualified immunity as to the City of Cleveland; however, we further hold that the district court correctly determined that the ordinance was not facially unconstitutional.

I.

It is well settled that while qualified immunity protects

officials, "the doctrine of qualified immunity is no defense to municipal corporations which may otherwise be liable for federal constitutional violations under [42 U.S.C. §1983]." Marsh v. Arn, 937 F.2d 1056, 1071 (6th Cir. 1991); see also Owen v. City of Independence, 445 U.S. 622, 638 (1980) ("there is no tradition of immunity for municipal corporations...We hold, therefore, that [a] municipality may not assert the good faith of its officers or agents as a defense to liability under §1983"); Barber v. City of Salem, 953 F.2d 232, 238 (6th Cir. 1992) ("it is possible that city officials may be entitled to qualified immunity for certain actions while the municipality may nevertheless be held liable for the same actions"). Therefore, the district court's determination that, since we had afforded qualified immunity to the individual defendants on appeal, no liability remained as to the City was erroneous. [1]

II.

The court rejected plaintiffs' allegation that the ordinance was unconstitutional on its face and therefore concluded that no

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[1] The City Concedes this point.

liability flowed from the enforcement of that ordinance. [2] Defendants contend that the district court should be affirmed because it claims that this court determined in its July 28, 1993, opinion that the ordinance is constitutional. See Defendants' br. at 8 ("This Court has already held that the ordinance that is the subject of this action is constitutional.") (Emphasis added.) Defendants' contention is in error. [3] In our earlier opinion, we merely noted that an Ohio state court of appeals had upheld the constitutionality of a prior version of the ordinance. Term Auto Sales, No. 92-3909, slip op. at 6-7 ("[p]rior to the January amendments, [expanding the scope of the ordinance to include automotive parts] Ohio courts had upheld the Cleveland ordinance against constitutional attack. State v. Zinmeister, 27

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[2] Plaintiffs do not raise a claim that the ordinance as applied was unconstitutional.

[3] Defendants further claim that in the June 28, 1993, opinion we determined that the search itself was constitutional. Defendants' br. at 8 ("[T]his court has held that the search itself, under the authority of this ordinance, was constitutional.") Again, defendants overstate the breadth of our holding in that opinion which was limited to the qualified immunity issue.

Ohio App.3d 313 (1985)"). Our decision on the merits, however, only addressed defendants' interlocutory appeal: whether the district court improperly denied the individual police officers' motion for summary judgment based on the defense of qualified immunity. Therefore we consider the facial validity of the ordinance in this appeal for the first time.

The Supreme Court has recognized that the Fourth Amendments' prohibition on unreasonable searches applies to commercial premises as well as to private homes. E.g., New York v. Burger, 442 U.S. 691, 699 (1987). This prohibition exists not only with respect to traditional police searches conducted for the gathering of criminal evidence, but also with respect to administrative inspections designed to enforce regulatory statutes. See Marshall v. Barlow's, Inc., 436 U.S. 307, 312-13 (1978); see also See v.City of Seattle, 387 U.S. 541, 546 (1967) (administrative search of commercial property generally must be supported by a warrant) ("the basic component of a reasonable search under the Fourth Amendment --that it not be enforced without a suitable warrant procedure -- is applicable...to

business...premises"). The Court has recognized that as to searches conducted of "closely regulated" industries, Burger, 482 U.S. at 700, a legislative scheme may serve as a substitute for a warrant. See Donovan v. Dewey, 452 U.S. 594, 603 (1981). The Court observed in Marshall: "Certain industries have such a history of government oversight that no reasonable expectation of privacy...could exist for a proprietor over the stock of such an enterprise." 436 U.S. at 313 (citation omitted). To date the Court has identified four such closely regulated industries: the liquor industry, Colonnade Catering Corp. v. United States, 397 U.S. 72 (1970); the firearms industry, United States v. Biswell, 406 U.S. 311 (1972); the mining industry, Donovan, 452 U.S. at 594; and the vehicle dismantling industry, Burger, 482 U.S. at 691.

The Supreme Court in Donovan held that a legislative scheme authorizing warrantless inspection of closely regulated industries will not violate the Fourth Amendment if the following three requirements are met: (1) there is a substantial government interest underlying the regulatory scheme pursuant to which the

search is made; (2) the warrantless inspections are necessary to further the regulatory scheme; and (3) the statute's inspection program, in terms of certainty and regularity of its application, provides an adequate substitute for the warrant requirement. See 452 U.S. at 600-03. In this last regard, certainty and regularity are shown when adequate notice is provided and individual discretion by searching officers is curtailed. Burger, 482 U.S. at 703. Consistent with these requirements, the statute or ordinance authorizing the inspection must contain time, place and scope limitations. Id.

In this case, plaintiffs concede that they are involved with "closely regulated" businesses and do not questions the substantial governmental interest underlying the regulatory scheme. Thus, the first two prongs of the Donovan test are satisfied. As to the third Donovan inquiry, plaintiffs argue that the ordinance is invalid because it arguably applies to more than just "closely regulated" businesses and contains inadequate time, place and scope limitations.

The ordinance at issue reads as follows:

601.15 Inspection of Vehicles for the Purpose of Locating Stolen Motor Vehicles and/or Stolen Parts.

(a) For the purpose of locating stolen motor vehicles and/or stolen motor vehicle parts, the Chief of Police or his authorized representative may inspect any motor vehicle, as defined in Section 4501.01 of the Revised Code and may inspect any motor vehicle part that has been marked with an identifying number by the manufacturer, situated in the City of Cleveland in any public garage, community garage, storage garage, service garage, repair shop, parking lot, auto sales lot, vehicle leasing or rental lot, motor vehicle salvage facility, scrap metal processing facility, auto wrecking yard, junk yard, or other similar establishment, and may inspect the title, registration, vehicle identification number, or license plates of the vehicle in order to establish the rightful ownership or possession of the vehicle or vehicle part.

(b) For the purpose of locating a stolen vehicle, the Chief of Police, or his authorized representative, may inspect implements of husbandry and construction equipment in places described in division (a) of this section.

(c) Whenever possible, inspections conducted pursuant to division (a) or (b) of this section shall be conducted at a time and in a manner so as to minimize any interference with, or delay of business operations.

(d) No person, without privilege to do so and with purpose to prevent, obstruct, or delay the performance of a police officer from inspecting any place described in division (a), shall do any act which hampers or impedes a police officer from making an inspection pursuant to this Section.

> Whoever violates this Section is guilty of obstructing vehicle inspections, a misdemeanor of the second degree.

It appears clear that a case can be made that the ordinance encompasses locations other than those under the control of a "closely regulated" business. However, since the plaintiffs concede that they are "closely regulated" businesses[4] and the ordinance is not being enforced against other than closely regulated businesses, we elect to save for another day what might be the result of an attempt to enforce the ordinance in a different context. We conclude that plaintiffs lack standing to challenge this ordinance on behalf of others not involved in a "closely regulated" business. See, e.g., Basiardanes v. City of Galveston, 682 F.2d 1203, 1210 (5th Cir. 1982) (ordinarily a litigant to whom a statute applies lacks standing to argue that the statute is vague as to others).

We turn now to the plaintiffs' "time, place and scope"

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[4] In Frisby v. Schultz, 487 U.S. 474 (1988), the Court upheld an arguably overbroad ordinance in the face of a claim of facial invalidity by holding that the ordinance has not and would not be enforced against those not properly within its purview.

argument.

In New York v. Burger, 482 U.S. 691 (1987), the Court considered whether a warrantless search of a vehicle dismantler's business, conducted pursuant to a statute authorizing such a search, fell under the exception to the warrant requirement for administrative inspections of closely regulated industries. The Court, construing the facial validity of a New York statute,[5]

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[5]The statute provides as follows:

> Records and identification. (a) Any records required by this section shall apply only to vehicles or parts of vehicles for which a certificate of title has been issued by the commissioner [of the Department of Motor Vehicles] or which would be eligible to have such a certificate of title issued. Every person required to be registered pursuant to this section shall maintain a record of all motor vehicles, trailers, and major component parts thereof, coming into his possession together with a record of the disposition of any such motor vehicle, trailer, or part thereof and shall maintain proof of ownership for any such motor vehicle, trailer or part thereof and shall maintain proof of ownership for any motor vehicle, trailer or major component part thereof while in his possession. Such records shall be maintained in a manner and for prescribed by the commissioner. The commissioner may, by regulation, exempt vehicles or major component parts of vehicles from all or a portion of the record keeping requirements based upon the age of the

found that the statute authorizing inspection of a vehicle dismantlers premises during normal business hours for purposes of reviewing inventory did not violate the Fourth Amendment. The Burger Court found that there was a substantial government interest in regulating the vehicle dismantling industry because "[a]utomobile junkyards and vehicle dismantlers provide the major market for stolen vehicles and vehicle parts." 482 U.S. at 709. Second, it found that the statute's authorizing a warrantless search was necessary to implement the regulatory scheme. allowing frequent, unannounced inspections. Id., at 710. Finally,

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> vehicle if he deems that such record keeping requirements would serve no substantial value. Upon request of an agent of the commissioner or of any police officer and during his regular and usual business hours, a vehicle dismantler shall produce such records and permit said agent or police officer to examine them and any vehicles or parts of vehicles which are subject to the record keeping requirements of this section and which are on the premises...The failure to produce such records or to permit such inspection on the part of any person required to be registered pursuant to this section as required by this paragraph shall be a class A misdemeanor.

482 U.S. at 694 n.1 (quoting N.W. Veh & Traf.Law §415-a5 (McKinney 1986)).

the Court concluded that the statute provided certainty and regularity sufficient to provide an adequate substitute for a warrant.[6] Id., at 711. In reaching this last conclusion, the Court noted several factors: under the statue the owner of a vehicle dismantling business was informed that inspections would be made on a regular basis; the searching official was allowed no discretion in deciding who to search; and the statute set forth who would conduct the inspection, and placed time, place and scope limitations on the inspections by allowing them to be carried out only during regular and usual business hours. Id., at 711-712.

Although the New York statute and the Cleveland ordinance are by no means identical, we conclude they are close enough in their scope, intent, and purpose for us to rely on Burger as support for finding that this ordinance is not facially

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The Burger opinion references State v. Zinmeister, 27 Ohio App.3d 313 (1985) as an example of a regulatory scheme similar to the one under review in Burger that had been upheld in the face of a constitutional attack. See 485 U.S. at 698 & n.11. In Zinmeister, the same ordinance under attack here was held to pass constitutional muster.

unconstitutional. It is true that the New York statue does provide that any request for documents shall be made "during...regular and usual business hours"; whereas, the Cleveland ordinance provides that inspections "shall be conducted at a time and in a manner so as to minimize any interference with or delay of business operations." We do not consider this difference in approach to be of constitutional significance. Both ordinances seek to minimize interference with legitimate business operations. One can always construct an argument that the language of either enactment might leave room for abuses. For example, under the New York statue, if the inspecting agent should choose the busiest time of the day to make the inspection, this might be construed as a harassing technique. Although the Cleveland ordinance tries to avoid this problem of business interruption, one could argue that the inspectors might come in the middle of the night.[7] We conclude

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[7] Indeed, plaintiffs' counsel did make this contention at oral argument. However, the ordinance does not provide for any type of forcible entry and if the inspection occurred when the business was closed, there simply would be nothing to inspect.

that such arguments are better addressed in a case in which the argument is advanced that the ordinance is being enforced in an unconstitutional manner.

Although there is little doubt that the ordinance could be improved upon by narrowing its scope and providing further time, place, and scope restrictions, we do not find the ordinance as written to be facially unconstitutional.

The decision of the district court upholding the constitutionality of the ordinance is **AFFIRMED.**

APPENDIX B

Case No: 94-3088

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

O R D E R

TERM AUTO SALES, INC.; E.K.P., INC., doing business as Brooklyn Salvage; ERNEST BOZIKIS; KERIAKOS BOZIKIS

Plaintiffs - Appellants

v.

CITY OF CLEVELAND

Defendant - Appellee

BEFORE: KEITH, MARTIN, and GUY, Circuit Judges.

Upon consideration of the petition for rehearing filed by the appellant,

It is **ORDERED** that the petition be, and it hereby is, **DENIED.**

ENTERED BY ORDER OF THE COURT

/s/

Leonard Green, Clerk

Filed June 12, 1995, Leonard Green, Clerk

APPENDIX C

U.S. Constitution, Amendment IV: The rights of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated, an no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Constitution, Amendment XIV, Section I: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No states shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any state deprive any person of life, liberty, or property with due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

28 U.S.C. §1254(1): Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

42 U.S.C. §1983: Every person, who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or any other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Acto of Congress applicable exclusively to the District of

Columbia shall be considered to be a statute of the District of Columbia.

Codified Ordinance of the City of Cleveland, §601.15:

(a) For the purpose of locating stolen motor vehicles and/or stolen motor vehicle parts, the Chief of Police or his authorized representative may inspect any motor vehicle, as defined in Section 4501.01 of the Revised Code and may inspect any motor vehicle part that has been marked with an identifying number by the manufacturer, situated in the City of Cleveland in any public garage, community garage, storage garage, service garage, repair shop, parking lot, auto sales lot, vehicle leasing or rental lot, motor vehicle salvage facility, scrap metal processing facility, auto wrecking yard, junk yard, or other similar establishment, and may inspect the title, registration, vehicle identification number, or license plates of the vehicle in order to establish the rightful ownership or possession of the vehicle or vehicle part.

(b) For the purpose of locating a stolen vehicle, the Chief of Police, or his authorized representative, may inspect implements of husbandry and construction equipment in places described in division (a) of this section.

(c) Whenever possible, inspections conducted pursuant to division (a) or (b) of this section shall be conducted at a time and in a manner so as to minimize any interference with, or delay of business operations.

(d) No person, without privilege to do so and with purpose to prevent, obstruct, or delay the performance of a police officer from inspecting any place described in division (a), shall do any act which hampers or impedes a police officer from making an inspection pursuant to this Section. Whoever violates this Section is guilty of obstructing vehicle inspections, a misdemeanor of the second degree.